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14 Attorneys for Defendants
 15 Children's Apparel Network, Ltd. and
 16 Mervyn's LLC

17 IN THE UNITED STATES DISTRICT COURT
 18 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 19 SAN FRANCISCO DIVISION

20 GYM-MARK, INC. and THE GYMBOREE
 21 CORPORATION,

CASE NO: C-07-3523 (EDL)

22 **ANSWER**

23 Plaintiffs,

24 v.

25 CHILDREN'S APPAREL NETWORK, LTD. and
 26 MERVYN'S LLC,

27 Defendants

28 Defendants Children's Apparel Network, Ltd. and Mervyn's LLC, by and through the undersigned
 29 counsel, as and for their Answer to the July 6, 2007 complaint (the "Complaint") of plaintiffs Gym-Mark,
 30 Inc. and The Gymboree Corporation, hereby state as follows:

- 31 1. Defendants deny knowledge and information sufficient to form a belief as to the truth or
 32 falsity of the allegations contained in paragraphs 1 and 2 of the Complaint.
- 33 2. Defendants admit the allegations contained in paragraphs 3 and 4 of the Complaint except
 34 to the extent paragraph 4 characterizes certain goods as "infringing," which allegation is denied.
- 35 3. In response to the allegations contained in paragraph 5 of the Complaint, Defendants admit

ANSWER

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1 that this Court possesses subject matter jurisdiction over the claims contained in the Complaint for
2 copyright infringement and unfair competition and denies that such claims are properly stated and that
3 Defendants are liable on such claims.

4 4. In response to the allegations contained in paragraphs 6 and 7 of the Complaint,
5 Defendants admit that they are subject to personal jurisdiction in this District and deny the remaining
6 allegations contained in these paragraphs.

7 5. Defendants admit the allegations contained in paragraph 8 of the Complaint.

8 6. Paragraph 9 of the Complaint contains a statement of law that Defendants neither admit
9 nor deny.

10 7. In response to the allegations contained in paragraph 10 of the Complaint, Defendants
11 admit that plaintiff Gym-Mark, Inc. is listed as the claimant on the copyright registration appended to the
12 Complaint as Exhibit A, and that the work in which copyright is claimed is depicted in such registration.
13 Defendants deny the validity of such registration, the originality of the work depicted in the registration
14 and the remaining allegations contained in this paragraph.

15 8. Defendants deny knowledge and information sufficient to form a belief as to the truth or
16 falsity of the allegations contained in paragraph 11 of the Complaint.

17 9. In response to the allegations contained in paragraph 12 of the Complaint, Defendants
18 admit that Mervyn's LLC has sold items of children's apparel manufactured by defendant Children's
19 Apparel Network, Ltd. under the trademark YOUNG HEARTS bearing various embroidery patterns, deny
20 knowledge and information sufficient to form a belief as to the truth or falsity of the allegations as to
21 when plaintiffs became aware of such sales and the alleged distinctions in the price points at which the
22 parties' respective goods were sold. Defendants deny the remaining allegations contained in this
23 paragraph.

24 10. Defendants deny the allegations contained in paragraphs 13 through 16 of the Complaint
25 except for the allegation in paragraph 16 that defendants compete directly with plaintiffs, which allegation
26 is admitted.

27 11. In response to paragraph 17 of the Complaint, Defendants repeat and re-allege their
28 responses to paragraphs 1 through 16 of the Complaint as if fully set forth herein.

12. Defendants deny the allegations contained in paragraphs 18 through 24 of the Complaint.

13. In response to paragraph 25 of the Complaint, Defendants repeat and re-allege their
responses to paragraphs 1 through 16 of the Complaint as if fully set forth herein.

14. Paragraph 26 of the Complaint contains a statement of law that Defendants neither admit
nor deny.

15. Defendants admit the allegations contained in paragraph 27 of the Complaint.

16. Defendants deny the allegations contained in paragraphs 28 through 31 of the Complaint.

AFFIRMATIVE DEFENSES

First Affirmative Defense

1. The Complaint fails to state a claim upon which relief may be granted.

Second Affirmative Defense

2. Plaintiffs' copyright registration Vau682-370 is invalid because it was issued in violation
of 37 C.F.R. § 202.3(b)(4)(i)(B).

Third Affirmative Defense

3. Plaintiffs' copyright registration Vau682-370 is invalid because it materially misstates the
nature of the work at issue.

Fourth Affirmative Defense

4. Plaintiffs' copyright registration Vau682-370 is invalid because the work at issue is not
original.

Fifth Affirmative Defense

5. Plaintiffs' second claim for unfair competition under Cal. Bus. & Prof. Code §§ 17200 *et seq.* is preempted by the U.S. Copyright Act, 17 U.S.C. 101 *et seq.*

PRAYER FOR RELIEF

WHEREFORE, Defendants Children's Apparel Network, Ltd. and Mervyn's LLC pray for
the following relief against plaintiffs Gym-Mark, Inc. and The Gymboree Corporation, as follows:

1. For judgment in favor of the Defendants against the Plaintiffs on each claim contained in
the Complaint;

2. For Defendants' reasonable attorneys' fees and costs pursuant to 17 U.S.C. § 505; and

3. For such other and further relief as the Court deems to be just and proper.

Dated: August 22, 2007

DORSEY & WHITNEY LLP

By _____ /s/
MARTHA C. LUEMERS
BRUCE R. EWING (pro hac vice)
Attorneys for Defendants.
CHILDREN'S APPAREL NETWORK, LTD. AND
MERVYN'S LLC

1 RULE 3-16 CERTIFICATION OF INTERESTED ENTITIES OR PERSONS

2 Pursuant to Civil L.R. 3-16, the undersigned certifies that the following listed persons,
3 associations of person, firms, partnerships, corporations (including parent corporations) or other entities
4 (i) have a financial interest in the subject matter in controversy or in a party to the proceeding, or (ii) have
5 a non-financial interest in that subject matter or in a party that could be substantially affected by the
6 outcome of this proceeding: The parent corporation of Mervyn's LLC is Mervyn's Holdings, LLC.

7 Dated: August 22, 2007

8

9 DORSEY & WHITNEY LLP

10

11 By _____ /s/
12 MARTHA C. LUEMERS
13 BRUCE R. EWING (pro hac vice)
14 Attorneys for Defendants
15 CHILDREN'S APPAREL NETWORK, LTD. AND
16 MERVYN'S LLC